

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 152 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SUNILKUMAR MADANLAL SAH

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioner

MR. D.N. PATEL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

Date of decision: 23/07/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant has challenged his conviction for the offence under Section 395 and 342 of the Indian Penal Code and sentence of 10 years rigorous imprisonment and a fine of Rs. 2,000/- for the offence under Section 395 IPC and of six months' rigorous imprisonment for the

offence under Section 342 of the IPC, under the judgement and order of the learned Additional Sessions Judge, Surat dated 13.2.1998 in Sessions Case No. 26 of 1996.

The prosecution version is that on 22.12.1994, the accused person alongwith others had committed robbery in the State Bank of Saurashtra, Kosamba Branch at about 1.30 P.M. The prosecution case is that they had robbed currency notes of Rs. 1,60,930/- from the cashier's counter. According to the prosecution, during the investigation, the present appellant who was the original accused No.2, had withdrawn a sum of Rs. 7,800/- which he had deposited in his bank account from the booty from his account and produced it. The prosecution case was that the appellant and other accused persons had been identified during the identification parade and three of them were absconding.

The record and proceedings of the case have been placed before us and the learned Counsel for the appellant has taken us through all the material evidence.

From the deposition of Pareshkumar Saxena, who was serving as a Personnel Manager in G.S.F.C., Kumarda, Tal. Mangrol, it appears that the appellant Sunilkumar Madanlal Shah was working as an Assistant operator in their Department. He has deposed that on 22.12.1994, Anilkumar had remained absent from his duty.

The prosecution witness complainant Bhikabhai Khojabhai Medariya in his deposition at Ex. 14 has stated that on 22.12.1994 at about 1.30 P.M., he and cashier Thakorebhai, clerk Kanjanbhai and peon Thakorbhai Mistry and others were doing their work in the Bank and at that time, a person had entered the Bank premises with a revolver and had said "hands up". There were three other persons who were also armed with revolvers. All these bank employees were locked up in the strong room by them for nearly one and a half hours. Thereafter, one boy had come and opened the door. After coming out, they noticed that robbery of an amount of Rs. 1,60,930/- was committed from the Bank. This witness had in the identification parade, identified the present appellant Sunilkumar as a person who had come to the Bank with the other person, who had spoken "hands up" and told him that "the work was done". According to this witness, he had identified the other offenders also during the identification parade. However, since three of the accused persons were absconding, there was no occasion for him to identify them in the Court. He has stated that the person who had spoken "hands up" was not present

in the Court. The version of this witness gets support from the complaint Ex.15. The complainant has stated that he was working as a cashier and according to him an amount of Rs. 1,60,000/was robbed by these persons on that day from the Bank. Even from the deposition of the Executive Magistrate Mr.Vyas and the identification parade panchnama Ex.26, it transpires that the present appellant Sunilkumar was duly identified as one one of the accused persons who had committed the said robbery. The evidence discussed in para 10 of the judgement of the trial Court which is borne out from the record shows that the present appellant was already having a Yamaha Motor bike when on 29.1.95 he purchased another motor bike for Rs.20,500/-. The present appellant had deposited some of the amount which was looted in his bank account and he had withdrawn Rs. 7,800 therefrom and produced the same before the Police. The other eye witnesses had also identified the present appellant.

The evidence on record therefore clearly shows that the present appellant had committed the offence under Sections 395 and 342 of the IPC levelled against him. We are in complete agreement with the reasoning adopted by the trial Court and hold that the conviction of the appellant is justified and the sentence imposed is proper. The appeal is therefore, summarily dismissed.

*/Mohandas